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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ANNA KIHAGI, an individual, 1263  
N. CRESCENT, LLC, a limited  
liability company, AQUAT 009, LLC,  
a limited liability company, and  
JAMBAX 2, LLC, a limited liability  
company,

Plaintiffs,

v.

CITY OF WEST HOLLYWOOD,  
CALIFORNIA, a California public  
facilities corporation; ALLISON  
REGAN, a natural person; MICHAEL  
JENKINS, a natural person; JEFFERY  
JONES, a natural person, and  
PHILLIP BRANDENBURG, JR. a  
natural person, and DOES I-10,  
inclusive,

Defendants.

CASE 2: 14-cv-00936-PSG (JEMx)

[Assigned to Hon. Philip S. Gutierrez, District Judge,  
Ct. 880 - Roybal Courthouse, Hon. John E.  
McDermott, Magistrate, Judge, Ct. C - LA - Spring  
Street Courthouse]

**THIRD AMENDED COMPLAINT  
FOR:**

**(1) VIOLATION OF EQUAL  
PROTECTION, 42 USC §  
1983;**

**DEMAND FOR JURY**

## INTRODUCTION

1  
2  
3 1. Plaintiff Anna Kihagi is a manager of various limited liability  
4 companies (“LLC”) that own residential rental units in West Hollywood. Kihagi  
5 alleges that the Defendants, the City of West Hollywood and various City officials,  
6 abused their power and arbitrarily, deliberately and maliciously singled her out in  
7 the enforcement of building, property maintenance, construction and other  
8 ordinances in an unequal and vindictive manner so as to deny her rights under the  
9 Equal Protection Clause, in violation of 42 USC § 1983.

10 2. The individuals named herein are being sued for their personal actions  
11 carried out under the color of law and not solely because of their official capacity.

12 3. In one instance, under the guise of the City’s Rent Stabilization Act  
13 (“RSO”), codified as West Hollywood Municipal Code (“WHMC”) § 17.52.090, the  
14 City filed a criminal complaint against Kihagi alleging that she created a “hostile  
15 living environment.” The state court granted Kihagi’s motion to dismiss on the  
16 grounds that the ordinance was unconstitutionally vague and unconstitutionally  
17 restricted speech protected by the First Amendment.

18 4. The City would not have pursued this criminal action but for its  
19 personal animus towards Plaintiff and its hostility to the Ellis Act. Plaintiff was  
20 singled out for disparate and unequal treatment. Plaintiff is informed and believes  
21 that she is the only person in the history of the City to be charged with a violation of  
22 this unconstitutional statute. The decision to prosecute this criminal action was  
23 made by defendants Alison Regan and Michael Jenkins in the role as representatives  
24 of the City with final decision making authority in filing civil and criminal actions in  
25 the name of the City.

26 5. The City also prosecuted her under WHMC § 17.28.010(b) for failure  
27 to reregister a rental unit, namely 1265 N. Crescent Boulevard, without any basis  
28 while knowing that the City already had the registration within its possession, and

1 which cause of action was dismissed after the trial court dismissed the charges  
2 pursuant to WHMC § 17.52.090. The City also charged Kihagi for failure to  
3 reregister the 1235 N. Vista Street rental unit even though the LLCs that Kihagi  
4 managed no longer owned the building as of the date of the filing of the criminal  
5 complaint and that the City was aware that the new owner had reregistered the unit.

6         6. Ms. Kihagi is the principal manager in several limited liability  
7 corporations which own apartment houses located in the City that were, in whole or  
8 in part, taken off the rental market as permitted under the Ellis Act, Cal. Gov. Code  
9 §§ 7060 *et seq.* This action alleges that the City abused its power and acted  
10 arbitrarily, capriciously and maliciously in its enforcement actions against Plaintiff  
11 by proclaiming its policy statement adopted by the City council of its visceral  
12 opposition to the Ellis Act. In so doing, it has violates the Equal Protection Clause  
13 of the United States Constitution by treating persons who avail themselves of their  
14 rights under the Ellis Act unequally in connection with the enforcement of the City's  
15 municipal code. The wrongful acts complained of herein are in retribution of  
16 Plaintiff exercising her rights under the Ellis Act and thus violative of Plaintiff's  
17 rights under the Equal Protection Clause.

18         7. Ms. Kihagi is heterosexual female African immigrant. Plaintiff is  
19 informed and believes that the City's unequal and disparate treatment of her is  
20 partially the result of bias on the part of City officials against African female  
21 immigrants. Plaintiff alleges that she has been discriminated against and treated  
22 differently because she is of African descent and an immigrant. Moreover,  
23 irrespective of the Defendants' motives, Kihagi has been singled out for disparate  
24 treatment and her right to equal protection thus violated.

25         8. The City and its employees have a visceral opposition to the Ellis Act  
26 and as a result have targeted Ms. Kihagi for harassment and attempted to criminally  
27 prosecute her for code violations based on arbitrary and capricious interpretations of  
28

1 the City's Municipal Code. Plaintiff has faced criminal prosecution under at least  
2 one City Ordinance that the state court held was facially unconstitutionally vague  
3 and unconstitutionally infringed on the First Amendment rights of Plaintiff and  
4 others. Plaintiff is being treated differently in connection with enforcement actions  
5 than other property owners in the City. The vendetta against Plaintiff is motivated  
6 by personal animus, discrimination and by City's bureaucratic hostility to the Ellis  
7 Act.

## 8 9 10 **JURISDICTION AND VENUE**

11 9. This Court has subject matter jurisdiction over this action under 28  
12 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

13 10. Venue is proper in the United States District Court for the Central  
14 District of California as all acts complained of occurred within this District.

15 11. Plaintiff, Anna Kihagi, an African-American female, was and is the  
16 manager of 1263 North Crescent, LLC ("North Crescent"), Jambax 2, LLC  
17 ("Jambax") and Aquat 009, LLC ("Aquat") (collectively "Kihagi" or "Plaintiff")  
18 which own or manage real property located within the City. She was the defendant  
19 in a criminal action brought by the Defendant for alleged building and construction  
20 violations relative to these properties where all charges were dismissed. 1263 North  
21 Crescent, LLC purchased the property with an address known as 1263-1267 N.  
22 Crescent Boulevard, West Hollywood in 2005. Prior to removal the building from  
23 the rental market in 2008, there was no problem with the City. However, all the  
24 problems and harassment only came after Kihagi exercised her rights under the Ellis  
25 Act.

26 12. Plaintiffs 1263 N. Crescent, LLC, Aquat 009, LLC, and Jambax 2, LLC,  
27 are California limited liability companies that owned the multi-unit apartment  
28

1 buildings that are the subject of this action. Kihagi is a Manager and Member of  
2 these LLCs.

3 13. Defendant, City of West Hollywood, California, is a public facilities  
4 corporation organized and existing pursuant to the laws of the State of California.

5 14. The City is responsible for the acts of its agents and employees, and is  
6 responsible for the enforcement of its construction, building and property  
7 maintenance codes. Due to an aging housing stock and the needs of affordable  
8 rental housing, the City has adopted as its long standing policy a hostility towards  
9 the Ellis Act by proclaiming on its website and adopted by the City Council that its  
10 policy statement and primary strategic goal is to “eliminate, or weaken, the Ellis  
11 Act” and supporting any and all “legislation to eliminate, or weaken, the Ellis Act”  
12 and has put into effect ordinances, rules and regulations intended to discourage  
13 persons from exercising their rights under the Ellis Act. Specifically, the City  
14 enacted WHMC §17.52.030 requiring that just cause must be dominant motive for  
15 eviction pursuant to the Ellis Act, whereas the Ellis Act does not have such a  
16 requirement. The City also adopted languages under WHMC §17.52.010(15)(c) to  
17 prolong the time within which a tenant and the City may commence a civil action  
18 against property owners. All the wrongful acts complained of herein were  
19 authorized by the City and carried out in furtherance of its unlawful policies.

20 15. Defendant Alison Regan is an individual employed by the City of West  
21 Hollywood. She is the City’s attorney responsible for determining all civil actions  
22 brought against Defendants and she responds and/or act in concert with Michael  
23 Jenkins and answers to the City Manager. While so employed, she was responsible  
24 for carrying out many of the wrongful acts complained of herein, including  
25 maintaining civil actions against Plaintiff in retribution to for the exercise of her  
26 rights under the Ellis Act and a personal animus towards Plaintiff.

1           16.    Regan is not being sued herein solely because she is an employee or  
2 City Official. She is named herein due to her personal acts in connection with  
3 investigating and deciding to file civil actions against Plaintiffs inasmuch as these  
4 civil actions were motivated by a personal vendetta against Kihagi. Reagan had in  
5 many instances the final decision making authority in deciding whether to pursue  
6 the civil actions complained of herein. In so acting, she singled out Kihagi disparate  
7 and unequal treatment.

8           17.    Alison Regan the City's attorney responsible for determining whether  
9 to file all civil actions brought against Defendants and she responds and/or acts in  
10 concert with Michael Jenkins, the City Attorney. While so employed, she was  
11 responsible for carrying out many of the wrongful acts complained of herein,  
12 including decisions to prosecute the civil actions referred to herein against Plaintiff  
13 in retribution to for the exercise of her rights under the Ellis Act and a personal  
14 animus towards Plaintiff.

15           18.    Regan has an official policy making role with the City in that she has  
16 the discretion and final say when to file civil and other enforcement actions on the  
17 City's behalf. Regan acted as a policy maker in connection with deciding to file the  
18 civil actions complained of herein.

19           19.    Defendant Michael Jenkins is an individual employed by the City of  
20 West Hollywood as the City Attorney. He is the City's attorney responsible for  
21 determining all civil actions brought against Defendants. Michael Jenkins is the  
22 appointed City Attorney and the chief legal officer of the City. He implements the  
23 vision, broad policy goals and ongoing strategic programs of the City Council and  
24 ensures that City operations remain true to and consistent with the Mission  
25 Statement and Core Values of the City. City Attorney duties include provision of  
26 legal advice to the City Council and City staff; supervision of all matters of legal  
27 significance; preparation of legal opinions; review and drafting of ordinances,

1 resolutions, contracts and program guidelines; and defense of challenges to City  
2 actions, laws, policies and procedures. While so employed, he was responsible for  
3 carrying out many of the wrongful acts complained of herein, including maintaining  
4 civil actions against Plaintiff in retribution for the exercise of her rights under the  
5 Ellis Act and a personal animus towards Plaintiff. Jenkins and Alison Regan had  
6 final decision making authority as to whether to file the civil actions complained of  
7 herein, all in the name of the City.

8         20. Defendant Michael Jenkins occupies a policymaking role. He acts on  
9 behalf of the City in deciding, either by himself or in conjunction with other  
10 attorneys, whether to file civil actions. In his policy making role and as a  
11 representative of the City, he made decisions to file and prosecute the civil actions  
12 against Plaintiff herein.

13         21. Jenkins has an official policy making role with the City in that he has  
14 the discretion when to file civil and other enforcement actions on the City's behalf.  
15 Jenkins acted as a policy maker in connection with deciding to file the civil actions  
16 complained of herein and in that capacity acted on behalf of the City.

17         22. Defendant Jeffery Jones is an individual employed by the City of West  
18 Hollywood. While so employed, he was responsible for issuing citations to Plaintiff  
19 as complained of herein in retribution for the exercise of her rights under the Ellis  
20 Act and a personal animus towards Plaintiffs. In addition, Jones delayed the  
21 issuance of permits, delayed inspections and took other official action against  
22 Plaintiff motivated by a personal animus towards Plaintiff and in retribution for the  
23 exercise of her rights under the Ellis Act.

24         23. Jones is not being sued solely due to his official capacity, but rather for  
25 his actions in carrying out a personal vendetta against Kihagi in issuing violations  
26 for alleged code violations as complained of herein. Jones singled out Kihagi and  
27 charged Kihagi with code violations that would never have been charged to other  
28



1 persons. Jones, acting under color of law, singled out Kihagi for unequal and  
2 disparate treatment due to a personal animus and in retribution for Plaintiffs  
3 exercising their rights under the Ellis Act.

4 24. Defendant Phillip Brandenburg, Jr is an individual employed by the  
5 City of West Hollywood. While so employed, he was responsible for issuing  
6 citations to Plaintiff as complained of herein in retribution for the exercise of her  
7 rights under the Ellis Act and a personal animus towards Plaintiffs. In addition,  
8 Jones delayed the issuance of permits, delayed inspections and took other official  
9 action against Plaintiff motivated by a personal animus towards Plaintiff and in  
10 retribution for the exercise of her rights under the Ellis Act.

11 25. Brandenburg is not being sued solely due to his official capacity, but  
12 rather for his actions in carrying out a personal vendetta against Kihagi in issuing  
13 violations for alleged code violations as complained of herein. Brandenburg singled  
14 out Kihagi and charged Kihagi with code violations that would never have been  
15 charged to other persons. Brandenburg, acting under color of law, singled out  
16 Kihagi for unequal and disparate treatment due to a personal animus and in  
17 retribution for Plaintiffs exercising their rights under the Ellis Act.

18 26. Plaintiff is informed and believes and thereon alleges that, at all times  
19 mentioned herein, Defendants were agents and/ or co-conspirators of each of their  
20 co-defendants and in doing the things herein after mentioned, or acting within the  
21 course and scope of their authority of such agents, servants, employees, alter egos,  
22 superiors, successors in interest, joint venturers and/ or co-conspirators with the  
23 permission and consent of their co-defendants and, consequently, each Defendant  
24 named herein, and those Defendants named herein as DOES 1 through 10, inclusive,  
25 are jointly and severally liable to Plaintiff for the damages and harm sustained as a  
26 result of their wrongful conduct.



1           27. Defendants, and each of them, aided and abetted, encouraged, and  
2 rendered substantial assistance to the other Defendants in breaching their obligations  
3 to Plaintiff, as alleged herein. In taking action, as alleged herein, to aid and abet and  
4 substantially assist the commissions of these wrongful acts and other wrongdoings  
5 complained of, each of the Defendants acted with an awareness of its primary  
6 wrongdoing and realized that its conduct would substantially assist the  
7 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

8           28. Each and every individual Defendant named in this complaint is being  
9 sued in individual capacities for the acts they are personally responsible for acting  
10 under color of law. They and not solely due to their official capacities.

11           29. The true names and capacities of Defendants DOES 1 through 10,  
12 inclusive, are unknown to Plaintiff, who therefore sue said Defendants by such  
13 fictitious names. Plaintiff is informed and believes on that basis alleges that each of  
14 the Defendants designated herein as a DOE is responsible in some manner and to  
15 some extent for the events and occurrences referred to herein and for the damages  
16 suffered by Plaintiff. At such time as Plaintiff learns the true name and capacity of  
17 any Defendant named as a DOE herein, Plaintiff will amend her complaint to  
18 identify said defendant, and include accompanying charging allegations.

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21                                   **STATEMENT OF FACTS**

22           30. The population of the City of West Hollywood, according to the most  
23 recent census data, is 34,650. The City has a very strict rent control ordinance and a  
24 large portion of its residents reside in apartments that rent far below market value.  
25 The popular support for rent control within the City by residents that benefit from  
26 the rent control ordinance is reflected by policies and enforcement actions taken by  
27 City officials who enforce the City's municipal code.

1           31. Due to an aging housing stock and the needs of affordable rental  
2 housing to low income residents, the City has adopted as its long standing policy a  
3 hostility towards the Ellis Act by proclaiming on its website that its policy statement  
4 and primary strategic goal is to “eliminate, or weaken, the Ellis Act” and supporting  
5 any and all “legislation to eliminate, or weaken, the Ellis Act”. As a result, it has  
6 put into effect ordinances, rules and regulations intended to discourage persons from  
7 exercising their rights under the Ellis Act. Specifically, the City enacted WHMC  
8 §17.52.030 requiring that just cause must be dominant motive for eviction pursuant  
9 to the Ellis Act, whereas the Ellis Act does not have such a requirement. The City  
10 also adopted languages under WHMC §17.52.010(15)(c) to prolong the time within  
11 which a tenant and the City may commence a civil action against property owners.

12           32. The ordinances and regulations adopted by the City are unlawful and  
13 inconsistent with the Ellis Act even though the City is aware that its attempt to  
14 regulate this area of commerce is pre-empted by State law. Time and again the City  
15 has taken unreasonable positions concerning the proper interpretation of the Ellis  
16 Act and attempted to coerce Plaintiff and others to abide by its patently  
17 unreasonable interpretation of the Ellis Act.

18           33. In response to the enactment of rent control ordinances by cities in  
19 California, including West Hollywood, and a California Supreme Court decision  
20 holding that landlords do not have the right to evict tenants to go out of the business  
21 of being a landlord, the California legislature enacted the Ellis Act. The Ellis Act  
22 provides generally that no local government can compel a rental property owner to  
23 continue to offer their housing for rent and allows rental property owners to exit the  
24 business and after a period of time to re-enter. The Ellis Act is lawfully used by  
25 property owners to take all or a portion of the units in a building off the market,  
26 renovate and then bring the property back onto the market after a proscribed period  
27 of time. Because of the City’s openly and unreasonably hostile policy to the Ellis

1 Act proclaimed as its mantra, it has enforced its ordinances in an arbitrary and  
2 capricious manner against Plaintiff in retaliation for Plaintiff availing herself of the  
3 privileges afforded under the Ellis Act, on the basis of her race and gender and a  
4 personal animus towards Plaintiff, and no one else.

5 34. On July 17, 2008, 1263 N. Crescent, LLC notified the City that it was  
6 withdrawing eight units located at 1263-1267 N. Crescent Heights Blvd from the  
7 rental market pursuant to West Hollywood Municipal Code (“WHMC”) Section  
8 17.52.010(15), also known as the “Ellis Provision.” At the time of the notification,  
9 four units out of eight were vacant, the prior tenants having voluntarily vacated their  
10 tenancies.

11 35. Soon after the notification to Ellis the building, in an effort to delay,  
12 frustrate and thwart Kihagi’s rights to remove 1263-1267 N. Crescent from the  
13 rental market, Alison Regan encouraged Moshe Straz , a contractor who had  
14 performed work for Kihagi, to file a false claim that he was a tenant living in unit  
15 1263 ½ of N. Crescent against Kihagi so that he could receive relocation fees of  
16 \$17,000. Alison Regan directed the preparation of Straz declaration for use in  
17 support of an ex parte application for a temporary restraining order (City of West  
18 Hollywood v. Kihagi, LASC Case No. 100392), which was granted on October 30,  
19 2008. By November 7, 2008, Straz retracted his misstatements and claims against  
20 Kihagi. However, by this time, Regan was able to force Kihagi to reach an  
21 agreement by giving four additional tenants an additional 90 days to eight months  
22 from November 14, 2008 to vacate their units. The parties agreed that the court  
23 would retain jurisdiction for purposes of enforcement settlement.

24 36. Plaintiff are informed and believe that at all times relevant, Michael  
25 Jenkins acted in concert with Alison Regan in filing a frivolous ex-parte application  
26 for preliminary injunction in an effort to delay Plaintiffs’ right to Ellis the building.  
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1 Jenkins and Regan acted on behalf of the City and had the final decision making  
2 authority to do so.

3 37. Pursuant to the Ellis Provision and agreement with the City, the  
4 withdrawal of all units became effective November 14, 2008, except unit 1267,  
5 which has a date of withdrawal of July 18, 2009 because the occupying tenant at this  
6 unit qualified for a one-year extension under Government Code Section 7060.4(b).  
7 The City filed and recorded with the Los Angeles County Recorder's Office two  
8 separate notices of restrictions: 1) Notice of Restrictions to Owners and Successors  
9 (Ellis Act) 1263-1267 Crescent Heights Blvd., West Hollywood, CA notifying  
10 owners the date of withdrawal of November 14, 2008; 2) Notice of Restrictions to  
11 Owners and Successors in Interest (Ellis Act) 1263-1267 Crescent Heights Blvd.,  
12 *Unit 1267*, West Hollywood, CA notifying owners the date of withdrawal of July  
13 18, 2009. The Ellis Act follows the 2/5/10 year reintroduction scheme where the  
14 earlier a property owner return a property to the market, the more severe penalties in  
15 term of monetary damages she would have to pay. As such, the date of withdrawal  
16 is a very critical date because it triggers the time within which an owner may return  
17 a property to the rental market, as well as the time a statute of limitation starts to  
18 run.

19 38. While knowing that the effective date of withdrawal for all units,  
20 except Unit 1267, has a date of withdrawal of November, Regan continued to  
21 intentionally represent to the courts and papers filed where a lawsuit was instituted  
22 against Kihagi that the date of withdrawal is July 18, 2009. This deliberate  
23 misrepresentation allowed her to coax another tenant in unit 1265 ½ to initiate  
24 another rent reduction hearing even though more than five years have passed since  
25 that unit was withdrawn from the rental market. Regan's zealous efforts to harass  
26 and make Kihagi's life difficult and unbearable in promulgating the city policy to  
27 eliminate the Ellis Act did not stop with coaching Straz to make false claim but she

1 continued to deliberately make false misrepresentations to tenants and the courts and  
2 other venues in light of the City's own documents. Her conduct cannot be said to be  
3 based on any rational basis and went beyond what a reasonable person would do due  
4 to her vendetta and hatred against Kihagi for invoking the Ellis Act in promulgating  
5 the City's objective to weaken the Ellis Act by single Kihagi out and thereby  
6 indirectly discouraging anyone else from exercising his/her rights. In carrying out  
7 these acts, Regan was representing the City with final decision making authority.

8 39. In another example showing the City's effort to circumvent the Ellis  
9 Act, the parties stipulated to a specific judgment to which the City would be entitled  
10 in the event of a breach of the Agreement by Kihagi in the *Kihagi I* matter.  
11 Nevertheless, in conjunction with its motion for enforcement, Regan initially  
12 submitted a proposed judgment that was not the judgment to which the parties  
13 stipulated. Regan tried to wrongfully obtain the addition of the following  
14 substantive matter to the judgment: "Appellants, their agents, representatives,  
15 successors, assigns, and all those acting in concert with them are permanently  
16 enjoined from the following: 1. Renting, or offering for rent, including advertising  
17 the units, the remaining vacant units at the property until after July 18, 2019." This  
18 provision was not included in the original stipulated judgment because the Parties  
19 never agreed to it. This item underscores how the City sought to read into the  
20 Agreement a term that simply did not exist and was contrary to the Ellis Act. This  
21 deceptive act was done in the name of the City and motivated by a personal animus  
22 and vendetta against Kihagi.

23 40. Commencing July 17, 2009, the Plaintiff through North Crescent,  
24 began renovating 1263 N. Crescent Heights. The appropriate work and building  
25 permits were obtained from the City and were displayed as required by law.

26 41. On or about January 11, 2010 and continuing thereafter, the City,  
27 through its Department of Code Compliance, issued several citations for violations  
28

1 of WHMC §19.30.030(P), Property Maintenance Standards, and WHMC §7.24.010,  
2 Standards for Vacant, Abandoned or Undeveloped Property. These violations were  
3 issued notwithstanding that the Crescent Heights property was never abandoned or  
4 vacant.

5 42. The City singled out Plaintiff for enforcement of a variety alleged code  
6 violations in an arbitrary, capricious and vindictive manner. The City was  
7 motivated by a personal hostility and strong arm tactics towards Plaintiff arising  
8 from the exercise of her rights under the Ellis Act which conflicted with the City's  
9 objective and goal to weaken the Ellis Act. One way to weaken the Ellis Act is  
10 applying its power to discourage anyone from exercising it by constantly harassing  
11 and frustrating that person or entity with silly code violations and bombarding her  
12 with criminal and civil proceedings. By making Kihagi an example, the City will  
13 achieve its objective in discouraging others from invoking the Ellis Act. The City  
14 has achieved its objective by discouraging Kihagi from Ellis Acting another  
15 apartment building that she manages.

16 43. West Hollywood Municipal Code § 19.30.030 (J)(2), for example,  
17 makes it a violation to maintain property "with a lack of adequate landscaping or  
18 ground cover sufficient to prevent blowing dust or erosion, or allowing the  
19 landscaping on private property or in a parkway to cause a hazard or inconvenience  
20 to pedestrians using the public sidewalk."

21 44. Pursuant to this Code section, Plaintiff has been cited numerous times  
22 due to a deviation of about ½ inch between the grass on her property and the top of  
23 the sidewalk. Virtually all the other properties on her block and on adjoining streets  
24 have this condition, with many of the properties having much greater deviations.  
25 Notwithstanding that deviations of this type are the general rule rather than the  
26 exception throughout West Hollywood, Plaintiff and Plaintiff alone has been singled  
27  
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1 out for enforcement with citations alleging that the condition constitutes a "tripping  
2 hazard."

3 45. Plaintiff is informed and believes that she is the only property owner  
4 within the City of West Hollywood that has received a "tripping hazard" citation  
5 based on the general conditions that formed the basis for the tripping hazard  
6 violations issued to Plaintiff. The issuance of tripping hazard citations was  
7 motivated by a personal animus towards Plaintiff motivated by her decision to avail  
8 herself of her rights under the Ellis Act.

9 46. WHMC §19.30.030(P) makes it a code violation when "A violation of  
10 any other provision of the Municipal Code or the Building Code that pertains to real  
11 property, structures, or which otherwise concerns the public health, safety, and  
12 general welfare."

13 47. WHMC §7.24.010 applies only to vacant, abandoned or  
14 underdeveloped property, and does not apply to property that is undergoing  
15 renovation or rehabilitation.

16 48. Municipal Code § 7.24.010 provides that in the case of vacant or  
17 abandoned buildings, the owner shall maintain such property in "good condition,  
18 keeping it cleaned, watered and weeded. Dead or dying plant material shall be  
19 removed." Plaintiff received a notice of violation on the grounds that there existed a  
20 brown spot on the corner of her lawn at the Crescent Heights property. Similar  
21 properties on the street or of the same conditions as of the Orange Grove, Crescent  
22 or Formosa property had lawns that were completely un-watered with dead grass.  
23 Moreover, properties throughout the City have front yards consisting totally of dead  
24 grass and dirt, but are not cited. Plaintiff alleges that the issuance of the "dry spot  
25 on the lawn" citation was issued based on a personal animus towards Plaintiff and  
26 was arbitrary and capricious.  
27  
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1           49. Plaintiff alleges that Plaintiff is the only person in the history of the  
2 City that has received a citation for the type of condition that existed on her property  
3 and that she was singled out and targeted due to a personal animus towards her  
4 motivated in part by the City's opposition to the Ellis Act and in retribution for  
5 Plaintiff availing herself of her rights under the Ellis Act.

6           50. All work was completed at North Crescent Heights in early 2012. In or  
7 about August 2011, the City commenced criminal proceedings (People v. Kihagi,  
8 LASC Case No. MC 1BV01333) against the Plaintiff for a number of citations that  
9 were issued in prior years but never resolved, many of which are described above.

10           51. The citation based on trash accumulating in the back yard, a citation  
11 which later became the subject of a criminal action, was based on construction  
12 materials being stacked in a paved area for the trash cans are designed to be placed.  
13 The area is not visible from the street. The City does not issue citations for the  
14 condition on Plaintiff's property and would not have issued the trash accumulation  
15 citation but for its animus towards Plaintiff and the City's visceral opposition to the  
16 Ellis Act and persons who avail themselves of their privileges under the Act.

17           52. To resolve the alleged criminal citations based on Code violations, the  
18 City and the Plaintiff entered into a deferred prosecution agreement to resolve the  
19 criminal citations. The term of the agreement was 18 months and would expire on  
20 November 12, 2013. All charges were ultimately dismissed against Plaintiff.

21           53. Just prior to the expiration of the deferred prosecution agreement, the  
22 City made an ex parte application to the Court in an attempt to revoke the  
23 agreement. The City alleged that the Plaintiff was either engaging in unpermitted  
24 construction at other properties, or that the properties were being maintained in  
25 violation of the property maintenance code.

26           54. The Court denied the City's application for ex parte relief. The Court  
27 further found that Plaintiff had not violated the deferred prosecution agreement.  
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1 The City petitioned the Superior Court to find Plaintiff in violation of the deferred  
2 prosecution agreement in bad faith and without cause.

3 55. Meanwhile, on May 16, 2012 the City filed a motion to enforce  
4 settlement pursuant to the settlement agreement reached in January 9 of  
5 2011 claiming that Kihagi re-rented certain units and thereby violating the settlement  
6 agreement. The City learned of Kihagi's re-renting the units by actively search  
7 through rental websites for advertising showing units for rent even though more than  
8 three years have passed since the property was taken off the rental market. It is  
9 important to note that the Ellis Act prohibited the city from enforcing contractual  
10 Ellis Act waivers in all circumstances except those specified in the statute. *Embassy*  
11 *LLC v. City of Santa Monica*, 185 Cal.App.4<sup>th</sup> 771, 776 (2010). The City claimed  
12 that Kihagi entered into an agreement whereby she had agreed not to re-rent any  
13 units for the next 10 years. The waiver argument is not only impermissible under  
14 the Ellis Act, but the judgment obtained was reversed on appeal on January 7, 2014.

15 56. In or about July 2012, an attorney representing the City, Regan,  
16 approached tenants at the Crescent Heights building, Diana Dominguez and Logan  
17 Yuzna, and told the tenants that they could obtain a rent reduction if they made a  
18 complaint. In fact, there were no grounds for the tenants to receive a rent reduction  
19 and Regan was aware of the fact there was no MAR for the unit as of the date of the  
20 July 17, 2008 notice of intent to withdraw. After the complaint was filed, an  
21 internal hearing was scheduled and the complaining tenants recruited by Regan  
22 failed to show up, as did Regan herself who showed up at the first hearing. The  
23 Administrative Law Judge presiding at the hearing dismissed the complaint and  
24 stated on the record that: "No one would have believed testimony of the tenants that  
25 they were tenants."

26 57. The actions taken by the attorney for the City, Regan, were done with  
27 the knowledge and ratification of the City to further the City's primary goal to  
28

1 weaken the Ellis Act and motivated by a personal animus towards Plaintiff and were  
2 malicious. Not only was it carried out maliciously, it was done in complete  
3 disregard for Kihagi's right to be treated equally. As a result of the City's and  
4 Regan's misconduct, Plaintiff was deprived of her constitutional rights and incurred  
5 attorney fees and other damages in defending numerous claims and suits against her.

6 58. On or about July 18, 2013, the City approved a building permit  
7 application for 1231 N. Vista, a property in which the Plaintiff is the managing  
8 director. The approved building permit allowed for minor improvements to the  
9 bathrooms and kitchen, replacement of the front door, replacement of closet doors  
10 and replacement of water heater enclosure.

11 59. On or about July 31, 2013, the property was inspected by Code  
12 Compliance Officer Jeffrey Jones. During his inspection, Mr. Jones alleged that he  
13 observed a property maintenance code violation at the 1231 N. Vista property. Mr.  
14 Jones alleged that the N. Vista property's parkway contained a tripping hazard, as  
15 well as lack of landscaping and overgrown and dead vegetation all in violation of  
16 WHMC property maintenance requirements. He sent a warning notice to the  
17 Plaintiff concerning these alleged code violations.

18 60. This warning was issued notwithstanding that the same tripping  
19 hazards existed at the property that was adjacent to 1231 N. Vista in addition to  
20 many, many other properties in the City.

21 61. On or about August 13, 2013, Mr. Jones returned to the N. Vista  
22 property at 7:34 *a.m.* and observed that no corrective action had been taken  
23 concerning the tripping hazard on the parkway, nor with the removal of the  
24 vegetation and plant material. On or about August 14, 2013, Mr. Jones issued a  
25 notice of violation to the Plaintiff concerning the alleged tripping hazard.

26 62. Plaintiff There are closer to fifty other buildings that Jones could have  
27 investigated, but he deliberately went straight to another real property managed by  
28

1 Aquat 009, LLC in which Kihagi is a managing director located at 1220 Formosa  
2 and got there by 7:40 *a.m.* and issued another notice of violation on August 15, 2013  
3 for a “tripping hazard” on the parkway, and for failure to properly landscape the  
4 property. The condition for which the tripping hazard was issued is common to all  
5 properties throughout the City and Plaintiff was arbitrarily singled out for  
6 enforcement. Mr. Jones indicated to Kihagi that he had been aware of the  
7 landscaping during the time owned by previous property owner. The City never  
8 writes tripping hazard citations based on the condition that existed on the property.  
9 In fact, the no reasonable person would ever characterize the condition as  
10 constituting a tripping hazard. Mr. Jones issued the tripping hazard citations based  
11 on his personal animus towards Plaintiff stemming initially from his personal  
12 opposition to Ellis Act conversions and deliberately target Kihagi for exercising that  
13 right. On information and belief, Mr. Jones has never cited another property for  
14 maintenance of a tripping hazard based a condition similar to the condition that  
15 existed on 1220 North Formosa even though similar conditions are common  
16 throughout the City.

17 63. Properties that are adjacent to 1220 N. Formosa, for example, have  
18 conditions similar to the condition that Mr. Jones alleged a tripping hazard but have  
19 never been cited. The nature of the landscaping violations and trip hazards was that  
20 the soil level had to be raised about ¼ inch to the same level as the concrete  
21 walkway. By deliberately issuing citations to Kihagi and no else, Jones’ conduct  
22 deprived Kihagi of her rights under the fourteenth amendment.

23 64. Defendant and City Official, Code Compliance Officer, Jeffery Jones is  
24 responsible for writing citations alleging the tripping conditions complained of  
25 herein. The conditions on the properties that led to the so-called tripping violations  
26 were the same conditions that existed on virtually all other properties on the same  
27 streets. The relevant section of the Municipal Code that was violated prohibits

1 unsafe conditions and makes no mention of deviations between the grass line and  
2 surrounding cement. Given the condition on the property for which the citations  
3 were issued, no reasonable person could conclude that a public safety hazard  
4 existed. The numerous trip violation citations concern conditions common in the  
5 neighbourhood yet no other persons have been cited for this condition.

6 65. On another occasion in the summer of 2013, Mr. Jones and another  
7 inspector, Phillip Brandenburg, inspected 1237 N. Orange, a property that is owned  
8 by a LLC for which Plaintiff is the managing director. They inspected the interior  
9 stairs and hand railings to determine if these items were of the proper size. They  
10 also inspected a small set of stairs leading to the parking lot. The exterior rear  
11 staircase measures 10 feet by 5 feet. The inspectors individually measured 15 steps  
12 to determine if each step, which was required by WHMC to be 7 inches high and 11  
13 inches wide, was in compliance. Two of the stairs did not meet these requirements,  
14 and were promptly repaired. They then measured each rail, of which there were  
15 over 100, to determine if each rail was 4 inches apart. Four rails did not meet this  
16 requirement. These were promptly repaired. Plaintiff attempted at least four times  
17 to set up an appointment from August 2013 to September 2013 to have the property  
18 re-inspected, neither Mr. Jones nor Mr. Brandenburg showed up at the appointed  
19 time.

20 66. After September 2013, she again made multiple requests for  
21 inspections that mostly have been ignore. She again contacted the City and was told  
22 that there would be an inspection on September 13, 2013. The night before, she  
23 flew into town, just for the inspection. The inspector did not come and she then  
24 personally contacted Brandenburg, who informed her that he would not respond to  
25 her request, and that she should have been informed by Jones that there were  
26 multiple parties to coordinate for inspection; and that any such inspection would not  
27 occur until all were able to coordinate scheduling.

1           67. Indeed, the City has time and again cancelled or missed appointment to  
2 approve improvements to Plaintiff's properties so that the inspection could not be  
3 completed within the window of time where Kihagi must be in compliance and  
4 pursuant to the agreement she'd entered into at the time of her plea in the criminal  
5 case No. 1BV01333. Using the fact that there was no final permit issued, the City  
6 sought to have Kihagi found not to be in compliance and dragged her back to court  
7 for sentencing. However, the court found that Kihagi was doing exactly what she  
8 was supposed to be doing and dismissed all charges against her. These cancelled  
9 and missed appointments were motivated by an animus towards Plaintiff and an  
10 intention by the City to make doing business with the City as difficult as possible.  
11 Plaintiff has suffered substantial injury as a result of the City's intentional delays in  
12 the form of lost income, emotional distress, increased expenses, additional financing  
13 expenses and other economic damages. Plaintiff now fears invoking the Ellis Act  
14 due to the City's constant harassment and strong arm tactics.

15           68. Defendant and City Official Phillip Brandenburg time and again  
16 deliberately delayed and failed to appear for inspections of construction work  
17 inspection appointments without any basis. Brandenburg's deliberate indifference  
18 to Kihagi's rights to equal protection caused her to be dragged back into court. The  
19 delays have caused increased construction costs and longer vacancy periods. On  
20 information and belief, these delays and missed appointments are motivated by a  
21 personal hostility towards Plaintiff who is being singled out for disparate treatment.  
22 The delays have caused economic injury in the form of increased construction costs  
23 and delays in being able to rent my properties.

24           69. The alleged stair and stair rail violations that existed on Plaintiff's 1237  
25 North Orange property were *de minimus* and technical. Violations such as the ones  
26 alleged against are never enforced against other property owners in the City.  
27 Plaintiff alleges that the only reason that she was cited for the stair and stair rail

1 violations are that Mr. Jones and Mr. Brandenburg have a personal animus towards  
2 Plaintiff stemming from their hostility to Ellis Act conversions and their prior  
3 dealings with Plaintiff. Their repeated individual acts under the color of state law of  
4 specifically looking for any kinds of de minimus violations to write Kihagi up and  
5 not schedule and/or cancel a final inspection because Kihagi was near the end of her  
6 probation term were deliberately indifferent to the mandates of the Fourteenth  
7 Amendment and calculated to deprive Kihagi of her rights to be treated equally. Mr.  
8 Jones and Mr. Brandenburg would not have cited any other similarly situated person  
9 or property for these violations. They would not have cited Plaintiff if it were not  
10 for the personal animus towards Plaintiff and the vendetta carried out by  
11 Brandenburg and other City employees.

12 70. The requirement that permits be obtained for work on dwellings has  
13 been unevenly enforced against Plaintiff. Jeffrey Jones has issued citations for work  
14 without a permit while at the same time not requiring permits for work on adjacent  
15 properties. In one case, a worker was taking down outdoor fixtures providing shade  
16 to windows. Plaintiff has witnessed similar work on an adjacent property and the  
17 City has not required a construction permit. This type work is routinely considered  
18 de minimus by the City and no permits are required. Plaintiff alleges on information  
19 and belief that Jones and the City have a vendetta against Plaintiff and have  
20 enforced the permit requirement in an arbitrary and disparate manner.

21 71. At the first sentencing hearing on revocation of the deferred sentencing  
22 agreement in the fall of 2013, the Defendant attempted to use the incidents described  
23 above as a basis for revocation of the agreement and to have the Plaintiff sentenced  
24 for violating the deferred sentencing agreement.

25 72. The state court rejected the City's argument and found that the nature  
26 of the work and the type of workers that needed to be involved showed that  
27 Plaintiff's efforts were diligent and reasonable. The City's attempt to revoke the  
28



1 deferred sentencing agreement was motivated by discrimination based on race and  
2 gender and a personal animus towards Plaintiff. The City's actions were malicious,  
3 arbitrary and capricious.

4 73. Moreover, at the hearing initiated by the City to revoke the deferred  
5 sentencing agreement, the Court found against the City. The state court found that  
6 the Plaintiff's efforts were diligent and reasonable and rejected the City's position  
7 that Plaintiff should be jailed. The Court found that the Plaintiff had complied with  
8 the Building Code by obtaining the proper building permits, thus vindicating the  
9 Plaintiff's position. The City acted maliciously and without probable cause in  
10 initiating the hearing where they sought to revoke the deferred sentencing  
11 agreement. The state court further found that the City acted unreasonably in failing  
12 to show up for appointments to approve work that had been performed. Plaintiff  
13 alleges that the City has a practice and pattern of delaying construction on Plaintiff's  
14 properties solely due to personal animus vindictiveness towards Plaintiff.

15 74. Plaintiff Plaintiff In another matter, *City of West Hollywood v. Anna*  
16 *Kihagi (City v. Kihagi I)*, Los Angeles Superior Court Case No. SC100932, the City  
17 filed a civil action. Unable to prove its case, the City and Plaintiff entered into a  
18 settlement agreement whereby Plaintiff would pay nothing, provided there were no  
19 further Ellis Act violations. If any further violations did occur, Plaintiff would pay  
20 \$10,000. The trial court retained jurisdiction to enforce the settlement. In 2012, the  
21 City sought to find Plaintiff in violation of the Ellis Act and to find her in violation  
22 of the settlement agreement. On appeal, the Court of Appeal found that the City's  
23 proffered interpretation of the settlement agreement and the Ellis Act was patently  
24 unreasonable and reversed, holding that the City had not presented any evidence the  
25 Plaintiff violated the Ellis Act and that its construction of the Ellis Act and  
26 settlement agreement was unreasonable.

1           75. The decision to pursue a violation of the settlement agreement by  
2 taking a patently unreasonable position was made by Alison Regan acting with final  
3 decision authority to prosecute this action in the name of the City.

4           76. The prosecution of Case No. SC100932 was vindictive and  
5 discriminatory from the outset. The underlying alleged violations were without  
6 merit and never would have been prosecuted if it were not for the City's animus  
7 towards Plaintiff and the City's determination to retaliate against Plaintiff for  
8 exercising her rights under the Ellis Act, thereby achieving its primary goal to deter  
9 other from exercising such rights and effectively weaken the Ellis Act.

10          77. As other evidence of the City maliciously singling out Plaintiff are the  
11 events in the hearings associated with *People v. Kihagi*, Case No. 1BV01333.  
12 Plaintiff prevailed in this action and did not suffer a criminal conviction. In that  
13 case, the City alleged as criminal various code violations regarding the upkeep of  
14 her properties. The code violations alleged against her involved conditions on her  
15 property that were common to all properties in the neighbourhood although no other  
16 property owners received code citations, much less criminal prosecution. The code  
17 violations that morphed into criminal prosecution included the following:

- 18           a. Violation of Municipal Code § 7.24.010 provides the owner shall  
19 maintain such property in "good condition, keeping it cleaned,  
20 watered and weeded. Dead or dying plant material shall be  
21 removed." Plaintiff received a violation for having a brown spot  
22 on her lawn when other properties on the street had completely  
23 dry grass;
- 24           b. Municipal Code § 19.30.030 (J)(2) makes it a violation to  
25 maintain property "with a lack of adequate landscaping or  
26 ground cover sufficient to prevent blowing dust or erosion, or  
27 allowing the landscaping on private property or in a parkway to

1 cause a hazard or inconvenience to pedestrians using the public  
2 sidewalk." Pursuant to this section, Plaintiff was charged with  
3 having a lawn with about a ¼ deviation from the sidewalk.  
4 Plaintiff received a violation because the subject of criminal  
5 prosecution although literally all other properties in the  
6 neighborhood have deviations between the level of the grass and  
7 sidewalk exceeding ¼ inch and have never received a citation.  
8 The prosecution for this offense was vindictive, selective and  
9 made in retribution for Plaintiff exercising her rights under the  
10 Ellis Act.

11 c. Municipal Code § 7.24.010(e) requires property owners to  
12 "[s]ecure, lock and close all buildings and structures upon the  
13 property, place or area in accordance with presently applicable  
14 FHA-standards, subject to the approval of the Building Official.  
15 Pursuant to this section, Plaintiff was criminally prosecuted for a  
16 violation that a window on the Crescent Heights property was  
17 left open ¼ inch, despite the fact that the ordinance applies to  
18 vacant buildings and Plaintiff's property was not vacant.  
19 Moreover, application to this ordinance to a window open ¼ inch  
20 is arbitrary and capricious and makes no sense. Plaintiff was  
21 singled out for prosecution due to personal animus towards  
22 Plaintiff and as retribution for exercising her rights under the  
23 Ellis Act.

24 d. Municipal Code § 7.24.010(c) requires the owner of a vacant  
25 building to "[s]ubmit a "Letter of Agency" to the West  
26 Hollywood Sheriff's Station every thirty days and post "No  
27 Trespassing" signs as required so that members of the Sheriff's  
28

1 Department are empowered to remove all unauthorized persons  
2 from the property. The “letter of agency” is a letter informing  
3 the Sheriff’s Department of the person responsible for the  
4 property. The statute is arbitrary and designed to harass Ellis Act  
5 properties to the extent that it requires a new letter every 30 days  
6 even if there has been no change in the responsible party.

7 Plaintiff was subject to criminal prosecution for violation of the  
8 ordinance. The prosecution was selective in the sense that no  
9 other person in the history of the City has been criminally  
10 prosecuted for violating this provision of the ordinance.

- 11 e. The City also sought to further prosecute Plaintiff for a myriad  
12 of other technical violations in a selective and vindictive manner  
13 motivated by a personal animus towards Plaintiff and in  
14 retaliation for exercising her rights under the Ellis Act.
- 15 f. In this criminal prosecution, Plaintiff entered into an agreement  
16 that the allegations would not be pursued provide no further  
17 violations occurred, provided that the City first give notice of  
18 any alleged violations and an opportunity to cure. The City  
19 unsuccessfully sought to pursue the prosecution and sentencing  
20 on the initial allegations based on code violations that occurred  
21 after the criminal prosecution was initiated. The state court  
22 judge rejected the City’s attempt to use the subsequent violations  
23 to trigger prosecution of the initial violations on the grounds that  
24 the City had not provided notice to Plaintiff’s attorney in the  
25 criminal case. The failure to provide Plaintiff’s attorney notice  
26 and opportunity to cure the subsequent violations was calculated

1 and intended to deprive Plaintiff the opportunity to cure the  
2 alleged subsequent violations.

3 78. The misconduct complained of herein is ongoing. In another civil  
4 action, *Sheehee v. Kihagi*, Case SC 119079 (“the *Sheehee* action”), the City incited a  
5 former tenant to bring a meritless action against Plaintiff on November 15, 2012,  
6 and then the City intervened on March 19, 2013 to advocate patently unreasonable  
7 and unlawful positions against Plaintiff. On June 6, 2013, nearly four years after the  
8 property was withdrawn, the City obtained a preliminary injunction to bar Kihagi  
9 from re-renting four units at the property located at 1263 N. Crescent Heights even  
10 though the Ellis Act does not provide for injunctive relief against Kihagi. To  
11 circumvent the Ellis Act, the City invoked WHMC §17.068.010(f).

12 79. Even after the Court of Appeal has reversed the judgment earlier  
13 obtained in the matter of Kihagi I, the City refused to have the preliminary  
14 injunction dissolved forcing Kihagi to file a motion to dissolve the injunction. The  
15 City’s unlawful conduct is motivated by a personal animus towards Plaintiff and  
16 hostility towards the Ellis Act. The City’s conduct in the *Sheehee* matter is ongoing  
17 and continuing. Plaintiff

18 80. Undeterred by the Court of Appeal’s decision, Regan brought a  
19 contempt hearing claiming that Kihagi violated the preliminary injunctive order.  
20 Regan’s hatred and personal animosity toward Kihagi was so great that in the civil  
21 contempt proceeding, she sought to place Kihagi in jail for five days. Kihagi filed a  
22 notice of appeal on October 1, 2014 after her motion to dissolve the injunction was  
23 denied. While the perfecting of an appeal stay the execution of injunctive order,  
24 Regan refused to stay the contempt hearing and again forced Kihagi to seek a writ of  
superdeas.

25 81. In *Sheehee*, after the City failed to coerce Kihagi into a new settlement  
26 that would provide for one low income unit, the City located a former tenant and  
27

1 encouraged and urged that he file within weeks a meritless action against Plaintiff  
2 for failing to offer to re-rent a unit formerly occupied by him. The tenant's lawsuit  
3 was encouraged and directed by Allison Regan and the City, even though it is  
4 without merit. It is on the third amended complaint, which was the subject of a  
5 demurrer because the action is barred by the statute of limitations. However, all  
6 proceedings in the trial court are stayed pending appeal.

7 82. The City's vindictive actions in the *Sheehe* action were all orchestrated  
8 by Regan acting in the name of the City with final decision making authority.

9 83. After encouraging and directing Sheehe to file a meritless action, the  
10 City under the direction of Allison Regan intervened in the lawsuit and sought to  
11 expand the its scope. Regan and the City orchestrated the *Sheehe* action by  
12 soliciting Sheehe and all along planned to expand the scope of the lawsuit to pursue  
13 the position that the court of appeal rejected in *City v. Kihagi I*. In *Sheehe*, the City  
14 took the same "absurd" position that was earlier rejected by the court of appeal.  
15 When the trial court issued an ambiguous oral ruling, the City, in bad faith,  
16 submitted to the trial court a Notice of Ruling that enjoined Crescent and Kihagi  
17 from renting or leasing certain units unless first complying with the Ellis Act by  
18 giving the former tenants the rights of first refusal and offering the same MAR as of  
19 2008. These were the same units that the court of appeal earlier found were outside  
20 the scope of the Ellis Act restrictions because no rental had occurred.

21 84. In the *Sheehe* action, the City attempted to place Ellis Act rent control  
22 restrictions on units even though the court of appeal squarely held that the specific  
23 units were not subject to the Ellis Act rent control restrictions, specifically that  
24 Kihagi must offer the units at the same MAR at the time the property was  
25 withdrawn in 2008. The non-conforming Notice of Ruling is that it sought to bring  
26 within the scope of Ellis Act restrictions the same units that were found not to be  
27 subject to Ellis Act restrictions in an earlier court of appeal opinion. The City and  
28

1 Allison Regan are presently prosecuting the Sheehe action premised on the precise  
2 same position that was found to be “absurd” in *WH v. Kihagi I*.

3 85. In *Sheehe*, Plaintiff was subjected to the prospect of 5 days of jail time  
4 in a civil contempt proceedings and forced to incur attorney fees to file an appeal of  
5 the intentionally misleading Notice of Ruling and then to seek a stay via a writ of  
6 supersedeas and application for temporary stay. On December 4, 2014, the court of  
7 appeal granted the writ and stayed all proceedings in *Sheehe*. The proceedings in  
8 the court of appeal involve the City prosecuting the same position that was found to  
9 be “absurd” in *WH v. Kihagi I*.

10 86. During this time frame, Regan quietly sought another judgment in the  
11 Kihagi I matter that Kihagi only subsequently learned. Regan clearly took  
12 advantage of Kihagi’s former counsel withdrawal from the case, which left her and  
13 the corporate entities without counsel and she was fighting to have the contempt  
14 hearing stay in the Sheehe matter. The basis of the second motion for enforcement  
15 in that case is the same issue and subject pending in Sheehe, in that Regan claimed  
16 that Kihagi re-rented Sheehe’s unit in May of 2014 thereby violating the Settlement  
17 Agreement. The City gave no notice to 1263 N. Crescent, LLC and Aquat 009, LLC  
18 but sought to permanently enjoined Kihagi and the LLCs from proceeding with the  
19 termination of tenancies at 1263-12671/2 N. Crescent Heights Blvd. under the  
20 Notice to the City of Intent to Withdraw Rental Units from the Market filed with the  
21 City of West Hollywood on July 17, 2008.

22 87. In *People v. Kihagi*, Case No. 4WA32199, the City recently filed  
23 criminal charged against Plaintiff violation of West Hollywood Municipal Code §  
24 17.52.090. Section 17.52.090 makes it a criminal offense to have “caused,  
25 permitted, aided, abetted, or suffered the harassment of a tenant in a manner that  
26 was likely to create a hostile living environment or cause a reasonable tenant  
27 similarly situated to vacate the rental housing unit.” There is no allegation that a  
28



1 tenant vacated a unit due to any unlawful acts of Plaintiff and the statute  
2 unconstitutional on its face. First, it is unconstitutionally vague in the use of the  
3 term “harassment . . . likely to create a hostile living environment.” *Baba v. Board*  
4 *of Sup'rs of San Francisco*, 124 Cal. App. 4th 504, 506 (Statute making a criminal  
5 offense to threaten to evict or recover possession in connection with Ellis Act  
6 conversion held unconstitutional). In *Baba*, the California Court of Appeal held that  
7 an ordinance substantially similar to § 17.52.090 is unconstitutional on its face. It  
8 makes criminal it a criminal offense to have “permitted . . . conditions likely to  
9 create a hostile living condition.” Second, the statute impermissibly makes unlawful  
10 speech protected by the First Amendment. The prosecution of this criminal action  
11 was done at the direction of defendant Allison Regan maliciously and motivated by  
12 a personal animus towards Plaintiff.

13 88. On about January 6, 2015, the Court in *People v. Kihagi*, Case No.  
14 Case No. 4WA32199, granted Kihagi’s motion to dismiss on the grounds that to §  
15 17.52.090 is facially unconstitutionally because the ordinance is unconstitutionally  
16 vague and also makes criminal speech protected by the First Amendment.

17 89. The complaint in *People v. Kihagi*, Case No. 4WA32199, which was  
18 filed on August 19, 2014 alleging four violations of West Hollywood Municipal  
19 Code Section 17.28.010(b), failure to register rental units after a vacancy and  
20 amended on September 17, 2014 to add two additional violations. These charges  
21 were filed even though Kihagi had timely provided the City Attorney with all the  
22 required registration information. Kihagi was singled out for enforcement and was  
23 factually innocent of the charges. After the Court dismissed the criminal charges  
24 related to tenant harassment, the People voluntarily dismissed the § 17.28.010 (b)  
25 charges, barring any further prosecution for the alleged offenses. The charges  
26 alleging violations of the registration requirements against Kihagi were the result of  
27 her being singled out and discriminated against due to the City’s policy to eliminate

1 or weaken the Ellis Act by punishing Kihagi for exercising her rights. The charges  
2 were brought at the urging of Regan and other City officials acting in their  
3 investigative rather than prosecutorial capacity. The West Hollywood City Attorney  
4 was not the office assigned to prosecute the criminal charges brought in *People v.*  
5 *Kihagi* and had no role other than in an investigative capacity.

6 90. In connection with the prosecution of the criminal action in Case No.  
7 4WA32199, Regan took on a role outside that of a prosecutor. She interviewed and  
8 solicited witness testimony and assisted in the preparation of investigative reports to  
9 submit to the attorneys responsible for prosecuting the case, an outside law firm.  
10 Regan played no role as a prosecutor in this criminal action, but rather as a the  
11 individual who headed up the investigations and urged the actual prosecutors to file  
12 charges.

13 91. On information and belief, Regan, either directly or indirectly through  
14 others, solicited tenants and encouraged them to embellish or fabricate stories to the  
15 effect that Plaintiff created a “hostile living condition” for the purpose of bringing  
16 criminal charges. This criminal case was orchestrated by Regan who encouraged  
17 and persuaded witnesses to give embellished and misleading statements.

18 92. The City, Michael Jenkins, and Allison Regan have recently initiated  
19 yet another civil proceeding in August of 2014 to collect fines and assessments in  
20 connection with the citations complained of herein. Many of the citations were six  
21 years old and the notices of fine were given in 2004. The action is styled *City of*  
22 *West Hollywood v. Kihagi*, Case No. SC122915. The liability for many of these  
23 citations was resolved in an earlier settlement of a civil action. This latest civil  
24 action is brought maliciously and without cause to believe that Plaintiff is  
25 responsible for payment. Furthermore, the liability on the citations is barred by the  
26 statute of limitations. Lastly, the fines associated with the citations are collectible  
27 only against the property and not Plaintiff as Plaintiff does not own any of the  
28

1 properties in question. This civil action is brought maliciously and without cause  
2 and the City and Regan know it.

3  
4 COUNT I

5 (Violation of Equal Protection, 42 USC § 1983)

6  
7 (Against All Defendants)

8 93. Plaintiff incorporates by reference all the preceding paragraphs as full  
9 set forth herein.

10 94. Plaintiff alleges that the Defendants have enforced building codes and  
11 other relevant laws in an arbitrary, capricious and discriminatory manner as more  
12 specifically alleged herein. The Defendants have enforced the City's laws in a  
13 uniquely discriminatory fashion against Plaintiff motivated by a personal animus  
14 towards Plaintiff and the fact that she is of African descent and in part by a  
15 bureaucratic hostility towards the Ellis Act. By bombarding Plaintiff with criminal  
16 and civil lawsuits and administrative hearings and citations, Defendants have  
17 achieved its primary objective of weakening the Ellis Act because no other landlords  
18 would exercise it or other landlords would think twice before exercising it. The  
19 Defendants have effectively discouraged Plaintiff from Ellis another building.

20 95. As a result of the City's unequal enforcement of its laws and personal  
21 vendetta, Plaintiff has been suffered damages in delay in completing her Ellis Act  
22 conversion, incurring attorney fees and having habitable structures held off the  
23 market. She has also incurred attorney fees in defending criminal proceeding  
24 initiated maliciously and suffered extreme emotional distress.

25 96. Plaintiff have also selectively prosecuted civil and criminal actions as  
26 more fully above. The ordinances that Defendants seek to enforce are  
27 unconstitutionally vague on their face. Plaintiff has targeted for disparate treatment

1 in that similarly situated persons are not prosecuted or cited for the violations and  
2 charges described above based on the conduct alleged against Plaintiff.

3  
4 Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff Plaintiff

5 **RELIEF SOUGHT AS TO ALL COUNTS**

6 WHEREFORE, Plaintiff prays that the Court award her the following relief:

- 7  
8 1. For an award of attorney fees pursuant to 42 USC § 1983 and any other  
9 applicable law;  
10 2. For general and special damages according to proof;  
11 3. For punitive damages against the City officials sufficient to deter the  
12 unlawful conduct alleged herein;  
13 4. For costs of suit herein; and  
14 5. For such other relief as the Court deems proper

15 Dated: May 11, 2015

16  
17 NT LAW GROUP

18 /s/ Julie N. Nong

19  
20 \_\_\_\_\_  
21 Julie N. Nong

22 Attorney for plaintiffs  
23  
24  
25  
26  
27  
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1 DEMAND FOR JURY TRIAL

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4 Plaintiff hereby demands a trial by jury.

5 Dated: May 11, 2015

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9 NT LAW GROUP

10 /s/ Julie N. Nong

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12 Julie N. Nong

13 Attorney for plaintiff

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